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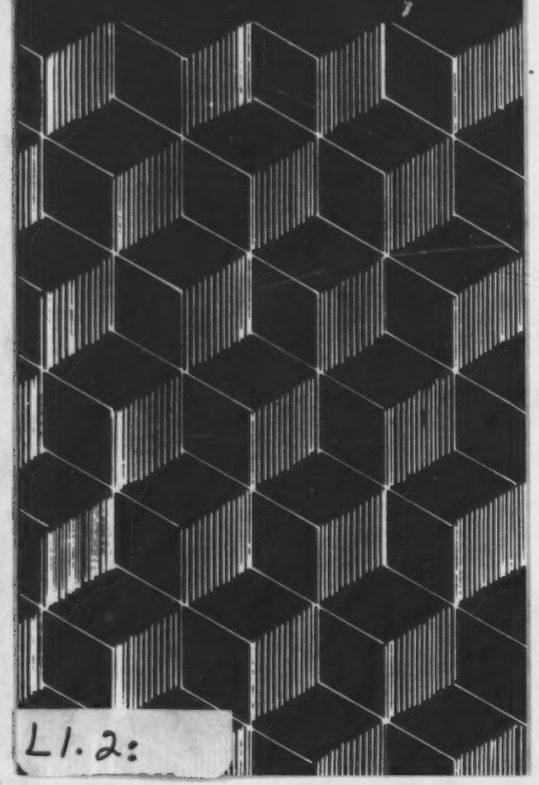
Union Investigations Under the LMRDA



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Union Investigations Under the LMRDA

A Guide for Officers and Members

U.S. Department of Labor
William E. Brock, Secretary

Office of Labor-Management Standards
1986

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Foreword

The Labor-Management Reporting and Disclosure Act of 1959, as amended, authorizes the Secretary of Labor to conduct investigations of certain internal union activities. This booklet provides general information about the types of investigations, the reasons for conducting them, the procedures followed, and the investigator's role in enforcing the Act. The information presented here is intended for use as a general guide only and should not be construed as a comprehensive statement of investigative policies. Questions concerning matters not covered in this booklet should be referred to the nearest field office of the Office of Labor-Management Standards.

LMRDA Investigations

The Office of Labor-Management Standards (OLMS) of the U.S. Department of Labor is responsible for administering portions of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA). The LMRDA governs internal union activities such as the election of officers and the imposition and maintenance of trusteeships, and it contains bonding provisions, fiduciary standards, reporting requirements, and prohibitions against officeholding by certain persons. Unions must file annual financial reports, copies of their constitutions and bylaws, and other reports with the Department of Labor. In addition, unions are required to retain records by which election and trusteeship activity and financial reports can be verified, and to provide affected employees with access to copies of collective bargaining agreements. Under certain circumstances, reports must also be filed by union officers and employees, and by employers and labor relations consultants.

Authority to Investigate

Sec. 601(a) of the LMRDA authorizes the Secretary of Labor to investigate "in order to determine whether any person has violated or is about to violate" any provisions of the Act (except the Bill of Rights of union members, sec. 609 dealing with union discipline, and amendments made by the LMRDA to other laws), and to "enter such places and inspect such records and accounts and question such persons" as may be necessary to determine whether a violation has occurred. The Secretary may issue subpoenas to compel testimony or to obtain records and other material needed to complete an investigation.

The Secretary may file civil actions in Federal district court to restrain or correct violations and bring about compliance with the LMRDA. In addition, the LMRDA specifies criminal penalties for the embezzlement of union funds and certain other offenses.

All OLMS employees involved in conducting investigations have in their possession credentials identifying them as authorized agents of the Secretary of Labor. These credentials are available for review by interested persons.

Financial/Reporting Investigations

LMRDA financial/reporting investigations do not necessarily involve the receipt of adverse information about a union. For example, an investigation can be prompted by an analysis of reports a union files with the Labor Department or other information to the effect that the union may not be in full compliance with the LMRDA. Investigations or audits are also opened, however, in response to specific complaints about a union's financial practices. The investigator can inform union officers whether the investigation being conducted is based on a specific complaint or has been initiated by OLMS as part of its program to monitor compliance with the Act. If the investigation is based on a complaint, information such as the complainant's name and the specific details of the complaint will not be disclosed, and the union will not be allowed to review the complaint or obtain a copy of it.

Financial reporting investigations are designed to:

- Verify the accuracy and completeness of a union's Labor Organization Annual Report (Form LM-2 or LM-3) and other reports filed with the Department of Labor;
- Determine the adequacy of financial records and bonding arrangements;
- Discover evidence of possible criminal violations such as embezzlement of union funds; and
- Ascertain compliance with other provisions of the LMRDA.

When an investigator first contacts a union, he or she will explain the general nature of the investigation and ask the officers to make available certain union records, reports, files, and other documents. Sec. 206 of the LMRDA requires all unions to retain such records for not less than 5 years after filing reports based on them. The investigator must be able to

review the material in private, free from interruption or interference. Depending on the facilities available and other circumstances, the review may be conducted at the union office, or the officers may be asked to provide OLMS with the material or bring it to the OLMS field office. The union will receive a receipt for any documents and records retained by OLMS during the investigation. This material may include, but need not be limited to:

- Financial books, records, and workpapers, including canceled checks, paid bills, invoices and pertinent correspondence, and documents supporting reimbursed expenses;
- Statements from banks, savings and loan associations, and credit unions;
- Records of savings accounts, certificates of deposit, and safe deposit boxes;
- Payroll and tax records;
- Bonding records;
- Mortgages, deeds, titles, and leases;
- Membership and dues records;
- Minutes of membership and executive board meetings; and
- The current constitution and bylaws of the union.

The investigator will interview appropriate union officials and members and may also obtain information from third-party sources such as employers, banks and other commercial institutions, and the international union. Beyond this, the procedures and amount of time involved will depend on circumstances such as the type of investigation being conducted, the size of the union, the quality and availability of records and other documents, and the extent and seriousness of any possible violations.

After the investigation the officers will be notified of any problem areas or deficiencies by the investigator or by mail. If appropriate, the union will be asked to take corrective action—such as filing amended reports, revising recordkeeping procedures, or changing bonding arrangements—within a reasonable amount of time. Failure to comply with requests for corrective action may result in the filing of civil action to secure compliance. Any evidence of possible criminal violations, such as the embezzlement of union funds or the falsification of records, will not normally be discussed with union officials at this time since it may be subject to further investigation or referral to the Justice Department.

Investigations and audits are a major element of OLMS' program to provide unions with direct compliance assistance. With a union's cooperation in making information available, an investigator will be able to develop an accurate view of the union's accounting and recordkeeping procedures. The investigation will enable OLMS to identify practices that may be creating compliance problems and to suggest appropriate changes. Advice and assistance in other areas of LMRDA compliance can also be provided.

Election Investigations

Under sec. 402 of the LMRDA, investigations of elections of officers are initiated by OLMS upon receipt of a timely complaint from a union member. Before filing a complaint, the member must have either exhausted internal remedies or pursued them for 3 months without obtaining a final decision.

After notifying a union that OLMS has received a complaint, the investigator will:

- Review the election provisions of the constitution and bylaws and any other election rules and practices of the union;
- Examine and retain, if necessary, records such as nomination and

election notices; membership and eligibility rosters; marked, unmarked, and voided ballots; minutes of meetings or conventions at which elections took place; credentials of convention delegates; tally sheets; and all other election records the union is required to preserve for 1 year under sec. 401(e) of the LMRDA; and

- Interview the complainant, election officials, employers, union officers, members, and employees, and other individuals who may be able to provide information about the election.

The investigative procedures followed and the length of time involved will depend on factors such as the size of the union, the nature of the complaint, the availability of records and other information, and the responsiveness and cooperation of the union and other concerned parties.

If the investigation discloses unremedied violations that may have affected the outcome of the election, OLMS will attempt to remedy the violations through voluntary compliance by the union. Corrective action normally includes rerunning all or a portion of the challenged election under OLMS supervision. The Secretary may, if necessary, file civil suit to have the court set aside the challenged election and order a new one conducted under OLMS supervision. If no corrective action is needed, the union and the complainant will be notified in writing following the investigation.

Trusteeship Investigations

Trusteeship investigations are initiated upon receipt of a written complaint from a member or subordinate union. Such complaints normally involve the unlawful imposition of a trusteeship or the commission of acts prohibited by sec. 303 of the LMRDA, which deals with voting by a trusteed union's delegates and the transfer of its funds to the parent union. Pursuant to sec. 304(a), the identity of the complainant will not be disclosed.

A trusteeship investigation normally involves both the parent and the trusteed unions. The investigator will review the trusteeship reports filed with the Department of Labor and will interview appropriate union officials, such as the trustee, designated officials, and former officers of the trusteed union. The investigator will also review and, if circumstances warrant, retain any necessary documents and records. This material may include, but need not be limited to:

- Union constitutions and bylaws, correspondence pertaining to the trusteeship, minutes of executive board and membership meetings, and the transcript of the trusteeship hearing, if one was held;
- Records pertaining to the selection of the trusteed union's delegates who vote in a convention or election of officers of the parent body; and
- Financial and other records.

If the investigation discloses evidence of violations of sec. 302 or 303 that have not been remedied, OLMS will seek corrective action through voluntary compliance by the parent union, trustees, or designated officials of the trusteed union. Where necessary, the Secretary may file civil action for appropriate relief, including injunctions. Enforcement of the trusteeship reporting provisions of sec. 301 is through procedures similar to those governing the other reporting provisions of the LMRDA.

Additional Information

Additional information about the LMRDA, including copies of the Act, compliance assistance publications, and reporting forms, is available from any one of the OLMS field offices located in the following cities:

Atlanta, GA
Birmingham, AL
Boston, MA
Buffalo, NY
Chicago, IL
Cleveland, OH
Dallas, TX
Denver, CO
Detroit, MI
East Orange, NJ
Fort Wright, KY
Grand Rapids, MI
Hato Rey, PR
Honolulu, HI
Houston, TX
Kansas City, MO
Los Angeles, CA
Miami, FL
Minneapolis, MN
Nashville, TN
New Haven, CT
New Orleans, LA
New York, NY
Philadelphia, PA
Pittsburgh, PA
San Francisco, CA
Seattle, WA
St. Louis, MO
Tampa, FL
Washington, DC

Consult your local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and telephone number of the nearest OLMS field office.

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